

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF THE)	
INDEPENDENT ENERGY PRODUCERS OF)	CASE NO. GNR-E-03-1
IDAHO FOR AN ORDER INCREASING THE)	
SIZE AT WHICH A QF IS ENTITLED TO)	
PUBLISHED AVOIDED COST RATES.)	ORDER NO. 29216
)	

On March 6, 2003, the Independent Energy Producers of Idaho (IEPI) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting that the Commission increase from 10 MW to 30 MW the size at which a qualifying cogeneration or small power production facility (QF) is entitled to published avoided cost rates. Reference Public Utility Regulatory Policies Act of 1978 (PURPA).

The Federal Energy Regulatory Commission (FERC) requires only that published rates be made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c)(1). In recent Case No. GNR-E-02-1, the Commission increased the size at which a QF is eligible to receive published avoided cost rates from 1 MW to 10 MW. Order No. 29069, July 2, 2002. Under PURPA there are no limitations on the size of eligible wind, solar, waste or geothermal facilities; the size limitation for eligible cogeneration facilities is 80 MW. 18 C.F.R. § 292.204(a); § 292.203.

IEPI contends that it is the role of this Commission to proactively encourage the development of the QF industry in order to promote the national goal of energy security. IEPI notes that the Commission has considerable legal latitude and authority in determining the size at which a QF may be eligible for published avoided cost rates. 18 C.F.R. § 292.304(c)(2). In furtherance of a national policy to diversify our national energy portfolio away from reliance on energy sources that are subject to interruption and outside the control of the United States, IEPI contends that the Commission is charged with implementing PURPA in such a manner as to actually encourage the development of facilities that generate electricity using renewable resources and facilities engaged in cogeneration. Failing to do so, it contends, is contrary to law and contrary to good public policy.

The Commission, IEPI contends, is to be commended for increasing the size of QFs that are entitled to published avoided cost rates from 1 MW to 10 MW. Unfortunately, it states, the intended result—development of alternative energy projects—has simply not materialized. Since Case No. GNR-E-02-1 was closed approximately nine months ago, only one QF contract has been signed. (7.5 MW hydro project—Tiber Montana/Idaho Power, Case No. IPC-E-03-1.) The flood of QF projects predicted by the utilities, IEPI states, has not materialized. The QF industry, it contends, is unable to achieve sufficient economies of scale at 10 MW to justify the development of alternative energy projects, such as geothermal, wind and biomass. IEPI recommends that the size limit for published rate eligibility be increased from 10 MW to 30 MW.

The different effects a 30 MW QF has on a utility's electrical system versus a QF 10 MW in size, IEPI states, are inconsequential. The effects any particular QF has on a host utility's electrical system, it states, are unique. Relevant factors identified include the proximity of a QF to transmission, distribution, substations and the utility's load. There will be no detrimental impacts caused by proposed projects of this size, IEPI contends, because the costs of interconnection and a detailed interconnection study are paid for by the QF.

IEPI notes that natural gas has now moved from the supply status of a just-in-time commodity to a commodity that is in deficit. Natural gas is projected, IEPI states, to remain in deficit status for the foreseeable future. Now, IEPI states, is the time, as a matter of sound public policy, for the Commission to do all in its power to encourage the wisest use of energy resources. IEPI requests that the Commission initiate a proceeding, preferably on Modified Procedure, with a goal of raising the capacity limit at which a QF is eligible for published rates from 10 MW to 30 MW. Reference IDAPA 31.01.01.053.03. Should the Commission desire an evidentiary hearing, IEPI stands ready to go to hearing or make whatever additional filings the Commission desires.

COMMISSION FINDINGS

The Commission has reviewed and considered the Petition of the Independent Energy Producers of Idaho in Case No. GNR-E-03-1. We have also reviewed our prior Orders in Case No. GNR-E-02-1 wherein we increased the published rate eligibility size from 1 MW to 10 MW and increased the length or term of QF contracts from 5 to 20 years.

IEPI has filed a Petition requesting that we increase from 10 MW to 30 MW the size at which a QF is entitled to published avoided cost rates. We note that FERC requires only that published rates be made available to QFs with a design capacity of 100 kW or less. Reference 18 C.F.R. § 292.304(c)(1). The Commission notes that QFs greater than 10 MW are not precluded from contacting an electric utility and individually negotiating a power purchase agreement. That has long been the contract procedure for large QFs. The starting point for such negotiations under the Commission approved methodology is the established posted rate. Should a utility fail to negotiate in good faith with a qualified QF, a complaint can be filed with this Commission. Reference IDAPA 31.01.01.054. We continue to find the established avoided cost and contract methodology to be reasonable and find that IEPI in its Petition presents no persuasive argument for revisiting the QF eligibility capacity limit for published avoided cost rates.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over the Petition filed in Case No. GNR-E-03-1 by IEPI pursuant to the authority and power granted it under Title 61 of the Idaho Code, and the Public Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified facilities, and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny the Petition filed by the Independent Energy Producers of Idaho for an Order increasing the size at which a QF is entitled to published avoided cost rates and its request to initiate a related proceeding.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28th
day of March 2003.



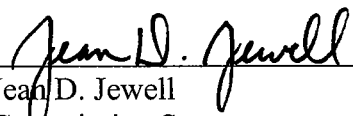
PAUL KJELLANDER, PRESIDENT

Commissioner Smith Dissenting Opinion Attached
MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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**DISSENT OF
COMMISSIONER MARSHA H. SMITH
CASE NO. GNR-E-03-1
ORDER NO. 29216**

Although it is true that the Commission has recently increased the capacity size at which a qualifying cogeneration or small power production facility (QF) is entitled to published avoided cost rates, the Petition raises the legitimate issue of whether the 10 MW size we set should be increased to 30MW. IEPI contends that the effects of such an increase on the utilities' electrical systems would be inconsequential and that it would encourage projects that do not rely on natural gas as a fuel for electricity generation.

Development of renewable resources not tied to natural gas as a fuel source would help avoid additional demand for natural gas and the associated upward pressure on rates for that commodity. It would also add to the diversity in the resources available for electricity production in our state and region. This issue is important and deserves full consideration. I believe that the Commission should request comments on the proposal in the petition and carefully consider whether our current capacity size is optimal.

Therefore, I respectfully dissent from the opinion of the majority.


MARSHA H. SMITH, COMMISSIONER